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OFFICE OF PETITIONS

Issued: July 11, 2006
Application No. 09/988,115
Filed: November 16, 2001
Atty. Dkt. No: 50195/008003

: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
: and NOTICE OF INTENT TO
: ISSUE CERTIFICATE OF
: CORRECTION

This is a decision on the "PETITION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT 37 C.F.R. § 1.705" filed June 21, 2006. This matter is being treated as a request for reconsideration of the decision mailed June 7, 2006 dismissing the application for patent term adjustment under 37 CFR 1.705(b) filed November 4, 2005.

The request for reconsideration of decision on application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby GRANTED.

The above-identified application matured into U.S. Patent No. 7,074,983 on July 11, 2006. The patent issued with 68 days of patent term adjustment. On November 4, 2005, an application for PTA under 37 CFR 1.705(b) was filed. The application was dismissed June 7, 2006 with an indication that the PTA at the time of mailing of the Notice of Allowance was zero days. The instant request for reconsideration was timely submitted. Patentees continue to contest the reduction in connection with the CRF disk filed August 6, 2002.

Patentees' arguments have been carefully considered and found convincing. Entry of a period of reduction of 155 days pursuant to 37 CFR 1.704(b) for applicant delay in responding to the Notice to File Missing Parts of Application mailed December 4, 2001 is incorrect. Review of the record reveals that the Notice to File Missing Parts of Nonprovisional Application required

applicants to provide an executed declaration, late surcharge, substitute

drawings and an initial computer readable form (CRF) copy of the "Sequence Listing", an initial paper or compact disc copy of the "Sequence Listing", as well as an amendment directing its entry into the application, and a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d). Applicants state that their disk was sent to the Office on February 7, 2002; however, the disk is present in the Office with a date of receipt of March 11, 2002. Regardless of the date of receipt of a disk, applicants did not file a complete response to the Notice to File Missing Parts within the three-month period provided in 37 CFR 1.704(b). The declaration, late surcharge and substitute drawings, and other responses to the Notice were not filed until June 6, 2002. Thus, the period of reduction pursuant to 37 CFR 1.704(b) for applicant delay is 94 days (e.g., March 5, 2002 to June 6, 2002). The period of reduction of 155 days has been removed and the period of reduction of 94 days has been entered.

Entry of a period of reduction pursuant to 37 CFR 1.704(c)(7) for filing a response with an omission is not warranted. The Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures, mailed June 24, 2002, notified applicants that the disk received March 11, 2002 was damaged and set a new period of time in which to comply. Applicants resubmitted the disk in reply to the Notice on August 9, 2002¹. Upon resubmission, applicants stated that the contents are identical to that filed on February 7, 2002.

In view thereof, the correct adjustment at the time of issuance of the patent is 129 days (adjustments totaling 391 days less reductions totaling 262 days).

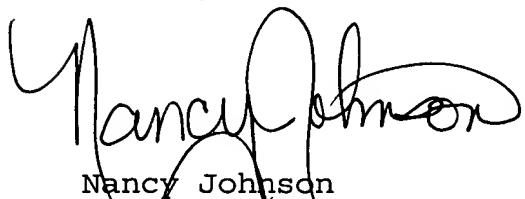
No further fees are due in connection with this matter.

This application file will be forwarded to the Certificate of Corrections branch for issuance of a certificate of correction

¹ with a certificate of mailing dated August 6, 2002.

to indicate that the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 129 days.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,074,983 B2
DATED : July 11, 2006
INVENTOR(S) : Robl, et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 68 days

Delete the phrase "by 68 days" and insert – by 129 days--